United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1291

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

B

THE UNITED STATES OF AMERICA,
Appellee,

v.

MICHAEL LEE JACKSON,
Appellant.

B/S

APPEAL FROM A JUDGMENT OF CONVICTION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK,
CR. 1973-251

BRIEF FOR THE APPELLEE

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Preliminary Statement

The defendant, Michael Lee Jackson, was charged in a one count Indictment with violating 18 U.S.C., Section 2314, by transporting a stolen motor vehicle from Akron, Ohio, to Batavia, New York knowing it to have been stolen.

Shortly after his arraignment the defendant moved for suppression of certain evidence, namely admissions and a confession; after a Suppression Hearing, the Honorable

John T. Curtin, U.S. District Judge for the Western District of New York, denied defendant's motion to suppress and admitted into evidence all of defendant's statements.

The defendant then consented to a trial without a jury, and the defendant and the government agreed that the record of the Suppression Hearing would constitute the record of trial (with an additional written stipulation that the vehicle in question was in fact stolen, was transported in interstate commerce, and was recovered in the possession of the defendant.) Judge Curtin determined beyond a reasonable doubt that the defendant was guilty of the charge set forth in the Indictment, and the defendant was subsequently sentenced to an indeterminant term of up to four years in the custody of the Attorney General. The defendant now appeals his conviction.

Statement of Facts

The defendant, Michael Lee Jackson, was arrested late in the evening of June 14, 1973 in Batavia, New York; the circumstances surrounding his arrest were as follows: Patrolman Roth of the Batavia Police Department, operating a "meter maid" vehicle, was answering an alarm indicating a possible break-in at the Selective Service Headquarters, located in an upper floor of the Mancuso Theatre Building in downtown Batavia (Appx. 6). While on his way to the building, he observed a 1968 Plymouth Fury parked in an alleyway behind the Mancuso Building, motor running, with the defendant seated at the wheel (Appx. 7). Roth interrupted his trip to answer the alarm and stopped to explore this situation. When asked for his name and license, the defendant identified himself as "Leon Smith" and stated he had no license (Appx. 7). He further stated that his friend "Al Smith" had started the car and

then left to go to the Mancuso Building (Appx. 7). He was asked to step out of the car, and he did so shutting off the engine. Roth asked where the keys were and was told Al Smith had them (Appx. 7). Roth also noticed a screwdriver in the car which he assumed the defendant used to turn off the ignition (Appx. 15). At this time, Roth, thinking perhaps this "friend" Al Smith might be responsible for the alarm in the Selective Service Headquarters, left the defendant and proceeded on to his original destination (Appx. 8, 19). He was informed, however, by fellow Patrolman Richardson that the building was secure. Telling Richardson of his earlier observations of the defendant, they both went back to the alleyway, although the defendant was no longer in this immediate area. The officers called in to their headquarters for a check on the status of the car and then split up—Roth to continue patrolling the area and Richardson walking back to the station (Appx. 8). Within a few minutes Roth was told the check revealed the car had been stolen in Akron, Ohio and he headed back to the vehicle (Appx. 8). At this time he saw the defendant approximately 12 feet from the car. Roth radioed the police station and asked for a backup unit. While waiting for assistance to arrive, his testimony was that he engaged in a very brief conversation with the defendant, although it did not center around the defendant's involvement with this vehicle (Appx. 9, 33, 34).

In the meantime Patrolman Richardson, on his way back to the station on foot, was met by a third officer, Patrolman Taylor, in his patrol car who had received Roth's request for backup assistance and was responding. Taylor picked up Richardson and they drove to the alleyway. The time between Roth's call for the backup and their arrival was no more than a few minutes (Appx. 11).

When these two arrived, they found Roth and the defendant at the car. Their testimony did not clarify exactly what was said to the defendant, nor by whom. To the best of Roth's recollection, he did not ask him about the auto although he does remember "another individual" asking, "Did you steal the car." Roth insisted, however, that he was not really sure what language was used (Appx. 31).

Patrolman Taylor recalled that either he or Richardson asked the defendant if it was his car and when the defendant replied "No," the defendant was asked whose car it was, to which he stated, "I don't know, I stole it." (Appx. 37, 40).

Richardson's testimony was that he asked the defendant, "Is that your car." When the defendant said "No", Richardson said he heard Taylor say something, but could not hear what. The next thing he heard was Taylor putting the defendant under arrest (Appx. 58, 59).

Mr. Jackson was then arrested, taken to Police Headquarters, and advised of his *Miranda* rights by Officer Taylor. He expressed no desire to avail himself of any of these rights and talked freely about his theft of the car, stating that he had stolen it in Akron "a couple of weeks ago." He also furnished various background facts—age, date of birth, etc. (Appx. 37, 60).

On June 15, 1973, Special Agent Baird of the F.B.I. received notification that the Batavia Police Department had discovered a stolen motor vehicle. He subsequently had a conversation with someone at the Batavia Police Headquarters who told him that Jackson was charged with a state crime and that he was confined in the Genesee County Jail (Appx. 71, 79, 80). Baird subsequently interviewed the defendant at the Genesee County Sheriff's Office, carefully advising him of all his *Miranda* rights

(Appx. 73). The defendant stated that he understood and did not want an attorney, and signed a waiver of rights form (Appx. 74). He then proceeded to give Special Agent Baird a complete statement. Baird's interview began at approximately 12:45 P. M. on June 15 and ended shortly after 2:00 P. M. (Appx. 75, 76).

On June 19, the defendant was arraigned in Batavia on a state charge of criminal possession of stolen property. In the meantime, Special Agent Baird verified that the vehicle had in fact been stolen (owned by one Charles Larkin of Akron, Ohio, and reported stolen from a parking garage in Akron late in the evening of June 12 or early in the morning of June 13, 1973), verified the defendant's previous record, and made a determination with some assurance that a federal charge should be brought. On June 25, Agent Baird received authorization from the United States Attorney's Office in Buffalo to proceed against Mr. Jackson and on June 26, the defendant made his initial appearance before the U. S. Magistrate, charged in a complaint with violation of Title 18, U.S.C., § 2312 (Appx. 77). On June 28, 1973, an indictment was returned in the U. S. District Court, charging the defendant with violating Title 18, U.S.C., § 2312, by transporting in interstate transportation a vehicle, knowing the same to have been stolen.

Following defendant's arraignment on this indictment and a subsequent suppression hearing (Appx. 1 to 101, 118 to 124) defendant agreed to be tried before the District Judge, without a jury (Appx. 103, 104) and was convicted of the charge against him (Appx. 112 to 116). It is from the conviction and sentence of the District Judge that the defendant now appeals.

Issues Presented

1. Did the District Court properly admit the admissions made by the defendant to the Batavia Police officers immediately prior to his arrest?

2. Did the District Court properly admit the confession given to the F. B. I.?

A. Was the detailed statement provided to Special Agent Baird unaffected by any infirmity found in the initial statement made to the Batavia Police?

B. & C. Does the delay by state authorities in arraigning defendant give rise to any "taint" on defendant's confession to the F. B. I.? Is there any basis for the conclusion that the Federal and State authorities had a "working relationship" in the apprehension of defendant?

D. Do the totality of the circumstances reveal that the police practices here were acceptable, so as not to require the suppression of defendant's confession?

3. Without defendant's statements would the trier of fact be justified in finding defendant guilty, based on his unexplained possession of the recently stolen automobile?

4. Is a question of the constitutionality of Title 18, U.S.C., § 3501 irrelevant as an issue in this case?

POINT ONE

The District Court properly admitted the admissions made by the defendant to the Batavia Police Officers immediately prior to his arrest.

The crux of the issue here is whether statements made by the defendant to the officers were properly admissible under the general guidelines of *Miranda v. Arizona,* 384 U.S. 456, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). Defendant's theory is that at the time of the making of the statements he was, in effect, "in custody" thus calling into operation the *Miranda* exclusionary rule on incriminating statements made while in custody and without an awareness on the part of the defendant of his constitutional rights. This would be so, according to defendant, because the Batavia Police did not advise him of such rights until after his incriminating statement was offered.

The touchstones for evaluating the incriminating statements of the defendant are found in the *Miranda* decision itself. The Supreme Court, after enumerating the now familiar warning requirements of that case, asserted that "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact finding process . . ." is excepted from the warnings requirements. 384 U.S. 477. Moreover, the court added that "Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding . . ." 384 U. S. at 478.

An analysis of the facts surrounding the defendant's statement, characterizing the statement as having been "volunteered" or as the product of general police investigation, leads to the conclusion that the statement was properly admitted by the District Judge.

A key question is whether the defendant was "in custody" at the time he made the statement. The task is to determine whether the questioning was initiated ". . . after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444.

In *United States v. Hall,* 421 F.2d 540 (2nd Cir. 1969) cert. den. 397 U.S. 990, the same question was raised in regard to certain statements made by Hall during questioning by F.B.I. agents prior to administration of the required *Miranda* warnings.[1] Hall's claim was that since the agents had certain information within their knowledge which cast him in a suspicious light the investigation had "focused" on him creating an atmosphere of custodial interrogation. This Court affirmed Hall's conviction, and held that the test for determining whether the admissions should be admitted involved "focus", as well as "custody" and that a determination of "custody" must be an objective one, not based solely on the suspect's perception of the situation nor upon the actual intent of the questioning officers. The court felt that such subjective criteria failed to recognize adequately *Miranda's* concern with the affect of an actual coercive atmosphere:

> The test must be an objective one. Clearly the Court meant that *something* more than official interrogation must be shown. It is hard to suppose that suspicion alone was thought to constitute that something; almost all official interrogation of persons who later become criminal defendants stems from that very source. While the Court's language was imprecise, doubtless deliberately so, it conveys a flavor of some affirmative action by the authorities other than polite interrogation. 421 F.2d at 544.

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[1] Questioning, it should be noted, which lasted approximately seventeen minutes; the Batavia Police Officers' initial questioning of the defendant in this case took place during a matter of one or two minutes, at the very most.

Hall cited approvingly a Fifth Circuit case which held that in the complete absence of the element of coercion, actual or potential, or police dominance of the individual's will, mild police activity should not prevent the introduction of statements freely made. *United States v. Gibson,* 392 F.2d 373 (4th Cir. 1968). In *Gibson,* a police officer asked the defendant to step outside a tavern, and once outside pointed to a car which the officer suspected as being stolen and said to the defendant, "Do you own this white car sitting here?" The defendant's subsequent statements were admitted by the Court, which found that the police are not required under *Miranda* to preface with a warning all non-coercive questioning conducted in the course of such an investigation:

> In the complete absence of the element of coercion, actual or potential, or police dominance of the individual's will, the mild police activity shown here should not prevent the introduction of statements freely made. The evils with which the Court was concerned in *Miranda* are not present here. Nor do we perceive in the record any element of accusation, deception, suggestion, or other tactics calculated to overawe, like those condemned in *Miranda* . . . (citation). Significant in the instant case are the short duration of the questioning, which lasted no more than a few minutes; the very casual, reasonable and routine manner in which it was conducted; and the absence of any apparent purpose either to force or to trick the suspect into an admission of guilt. 392 F.2d at 376.

A similar conclusion should be reached on the facts present here. While the Batavia Police knew that the car in which defendant was seen had been stolen, naturally raising suspicion, the situation, from the point of view of the officers, was thought suspectible of innocent explanation in light of the defendant's prior statement that he was waiting for a friend. This "friend" could just as easily have been considered a suspect as the defendant himself.

Further, any other information adduced by the questioning prior to the defendant's admission, while increasing the level of suspicion of the officers, did not create the kind of atmosphere of significant restraint that triggers *Miranda*.

Up until the point where the admissions were made the defendant had not been placed under arrest and an effort was being made by the officers to carry out a preliminary check of the circumstances which until then had been merely suspicious. The questioning was brief, was conducted away from the station house, and the atmosphere was non-coercive in that there had been no restraining, handcuffing, frisking or the like prior to the defendant's statement. It should be clear to this Court that Judge Curtin's finding that:

> . . . the defendant was not in custody. The questioning was brief. The atmosphere was non-coercive in that there was no restraint, handcuffing or frisking. The statement made to the officers at the time was voluntary . . .

was completely grounded in the facts before the Judge, and in the applicable law.

POINT TWO

A. The District Court properly admitted the confession given to the F. B. I. the detailed statement provided to Special Agent Baird is not affected by any infirmity found in the initial statement made to the Batavia Police.

On June 15, 1973, after the defendant was arrested by the Batavia Police and removed to the Genesee County Jail, Special Agent Jim Baird of the Buffalo Office of the Federal Bureau of Investigation questioned the defendant and obtained from him a detailed account of his activities,

including a signed confession of the theft and interstate transportation of the automobile. Even assuming *arguendo*, that some defect should be found in the acquisition of the statement made during the initial encounter, any illegality at that stage has no effect on the admissibility of the otherwise constitutionally valid confession given to the F.B.I. approximately twelve hours later. The agent's careful and thorough warnings were clearly proper and there was nothing about his questioning to render the signed confession inadmissible as a by-product of alleged illegal action on the part of the local authorities. While the government's primary contention is that there was no custodial interrogation when the defendant made his first statement to the Batavia Police, the position asserted herein is that *if* there was initial custodial interrogation such as to render inadmissible defendant's admissions, there exists no causal relationship between the failure of the Batavia Police to adequately warn the defendant, and the later confession to Special Agent Baird.

Unless such causal relationship between an earlier improper interrogation and the later confession can be established, *Westover v. United States*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966), (a companion case of *Miranda*) will not require suppression of the later statement.

The admissibility of the confession given to the F.B.I. derives from the principle that federal authorities must sometimes be allowed to conduct reasonable investigations even when the state authorities have failed properly to apprise a suspect of his constitutional rights. *United States v. Knight*, 395 F.2d 971 (2nd Cir. 1968) cert. den. 395 U.S. 930. One factor involved is whether the federal authorities were the beneficiaries of pressure applied by the local interrogation, in which there is a strong basis

both in logic and in policy for drawing the inference that the second confession was the product of the first. *Westover v. United States, supra.* The record herein reflects no coercive pressure at all on the part of the Batavia Police. The statement by the defendant at the initial confrontation must be considered to be seemingly spontaneous in nature in that when he was asked whose car it was, he replied, "I don't know, I stole it." It cannot be seriously contended that this statement is the result of any coercive pressure. Similarly, the station house questioning by Batavia Police (admitting that the results of this questioning were not considered by Judge Curtin in reaching his finding of defendant's guilt) was conducted in a low-key coercion free atmosphere, without any hint of coercion or pressure.

Moreover, the interview by Special Agent Baird took place more than twelve hours after the arrest and questioning of the defendant by the Batavia Police. The defendant had slept and eaten, and Baird in no way badgered, cajoled or intimidated him during the interview. In fact, defendant's signed statements reflect a completely voluntary and free atmosphere in which he was more than willing to confess to the crime and to detail his background.

B. & C. The delay by State Authorities in arraigning defendant does not "taint" defendant's confession to the F. B. I. so as to render it inadmissible. There is no basis for the conclusion that the Federal and State Authorities had any "working relationship" in the apprehension of this defendant.

There being no evidence here that any pressure was applied by the State authorities, the only other factor for establishing that the second confession was "tainted" by the first would be that a "working relationship" existed between the State and Federal authorities whereby Federal law enforcement officers induced State officers to hold a defendant illegally so that they may secure a confession. To bring a case within this rule there must be facts, not mere suspicion or conjecture, and the mere fact that two or more agencies have the same crime or the same suspects on their books and that they are cooperating to achieve a solution does not make one the agent of the other and thus responsible for the others acts. *United States v. Coppola*, 281 F.2d 340 (2nd Cir. 1960). In the absence of any evidence of collaboration to achieve an unlawful end, the admission of an uncoerced federally obtained confession made during a detention by local officers, taking into account the sufficient insulation from the prior admission provided by the warnings given to the defendant by Special Agent Baird, and the lapse of time between the two statements, and there being no evidence that the F.B.I. had any knowledge whatsoever of the action the Batavia Police might take as a matter of local law enforcement, such confession is clearly admissible. *United States v. Gorman*, 355 F.2d 151 (2nd Cir. 1965), *United States v. Coppola*, *supra*. Furthermore, it is not improper for federal officials to interview a defendant while he is in state custody and before he is arrested on a federal warrant. *United States v.*

Ireland, 456 F.2d 74 (10th Cir. 1972), *United States v. Coppola*, *supra*. At the time Special Agent Baird conducted his interview with the defendant, even assuming that he had probable cause to arrest the defendant, he was not required to halt his investigation at that point and set the machinery of the federal criminal process in motion before carrying the investigation to a point where he could determine with some assurance that a federal complaint should issue.[2]

If the defendant could show the existence of a "working relationship" between federal and local authorities amounting to "constructive federal custody" then the proscription against unreasonable delay might apply if the officers involved were shown to have delayed arraignment for the *sole* purpose of subjecting the defendant to constant interrogation or had not informed him of his constitutional rights. *United States v. Marrero*, 450 F.2d 378 (2nd Cir. 1971) cert. den. 405 U.S. 933; *United States v. Price*, 345 F.2d 256 (2nd Cir. 1965); *United States v. Halbert*, 436 F.2d 1226 (9th Cir. 1970).

But there is simply no competent evidence that there was any such relationship, and Judge Curtin's finding that: "it is clear that the F.B.I. did not have knowledge of this improper procedure . . ." and his conclusion that ". . . the statement given to Agent Baird by the defendant on the afternoon of June 15 was not the product of any unlawful incarceration" should not be overturned by this Court.

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[2] Of course, the requirement that an arrested person be taken without unnecessary delay before the nearest available Federal Magistrate cannot be violated until the accused is taken into federal custody, and thus it is inapplicable here. And even if one took the position that the F.B.I. Agent's interrogation of the defendant marked the initiation of a federal "prosecution", the confession obtained then comes so close in time to the initiation of federal involvement as to be admissible, since any period of illegal detention which occurs *after* the challenged evidence is obtained is not considered in determining whether the evidence should be excluded. *United States v. Mitchell*, 322 U.S. 65, 64 S.Ct. 896, 88 L.Ed. 1140 (1944).

D. The totality of the circumstances reveal that the police practices here were acceptable, so as not to require suppression of defendant's confession.

Defendant's argument that the totality of the circumstances of defendant's arrest and questioning indicate a blatant disregard for his rights and constitute a flagrantly illegal, calculated, and substantial disregard for the applicable rules of law, is without merit.

The facts of this case properly speak for themselves in this regard and extensive discussion seems unwarranted. The Government feels that the actions of all of the police officers here, with the exception of the failure of the Batavia Police Department to promptly arraign defendant, constitute acceptable law enforcement practices under these circumstances.

POINT THREE

Even without defendant's statements, the trier of fact would be justified in finding defendant guilty based on his unexplained possession of the recently stolen automobile.

Defendant appears to concede that the mere unexplained possession by the defendant of the recently stolen automobile gives rise to a permissible inference that the defendant was, in fact, guilty of the offense charged. *Glavin v. United States*, 396 F.2d 725 (9th Cir., 1968), *cert. den.* 393 U.S. 926; *United States v. Linder*, 442 F.2d 419 (9th Cir., 1971).

Thus, while the government does not suggest that there are defects in the acquisition of defendant's statements, even without such statements the facts of this case as stipulated by the defendant (Appx. pp. 107-108) could justify defendant's conviction.

POINT FOUR

The Constitutionality of Title 18, U. S. C., § 3501 is not an issue here; Judge Curtin found that the statement given to the F. B. I. was given voluntarily, and within the guidelines of Miranda v. Arizona.

Certainly, defendant presents an obscure position, in his brief, in his claim that the argument was raised by him below, and in his citations to the law, that Title 18, U.S.C., § 3501 is unconstitutional. In any event, while the government does not wish to minimize the serious implications of § 3501 as it relates to *Miranda,* in the context of the particular facts of this case and especially due to Judge Curtin's decision of the voluntariness of defendant's confession to the F.B.I., which decision is clearly not based solely on § 3501,[3] it does not appear as if the constitutionality of 18 U.S.C., § 3501 is a meaningful issue presently before this court.

Whether examined under the light of § 3501 or under the light of the so-called *McNabb-Mallory* rules[4] and *Miranda, supra,* the defendant's confession to the F.B.I. was properly admitted by the trial judge. See *United States v. Marrero, supra; United States v. Halbert, supra;* and *Grooms v. United States,* 429 F.2d 839 (8th Cir., 1970).

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[3] In fact, Judge Curtin makes no mention of 18 U.S.C., § 3501 in his decision denying defendant's motion to suppress.

[4] *McNabb v. United States,* 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819 (1943); *Mallory v. United States,* 354 U.S. 449, 77 S.Ct. 1356, 1 L.Ed. 2nd 1479 (1957).

Conclusion

It is respectfully submitted that for the foregoing reasons the judgment of conviction should be affirmed.

Respectfully submitted,

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State of New York)
County of Genesee) ss.:
City of Batavia)

RE: United States
v
Michael Lee Jackson
Docket No. 74-1291

I, Roger J. Grazioplene being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

On the 23 day of May, 1974 I mailed 2 copies of a printed Brief in the above case, in a sealed, postpaid wrapper, to:

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Edward J. Wagner, Assistant U. S. Attorney.
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Roger J. Grazioplene

Sworn to before me this
23 day of May, 1974
Monica Shaw

MONICA SHAW
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 19..7[illegible]